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28 *Cox Communications, Inc.; CoxCom, LLC; and*
Cox Communications California, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

20 ENTROPIC COMMUNICATIONS, LLC,
21
22 Plaintiff,
23
24 v.

23 COX COMMUNICATIONS, INC.;
24 COXCOM, LLC; and COX
25 COMMUNICATIONS CALIFORNIA,
26 LLC,
27
28 Defendants.

LEAD CASE:
Case No. 2:23-cv-1043-JWH-KES

RELATED CASE:
Case No. 2:23-cv-1047-JWH-KES

**COX DEFENDANTS' RESPONSE
TO MAXLINEAR'S OBJECTIONS
TO SPECIAL MASTER'S REPORT
AND RECOMMENDATION ON
MOTIONS REFERRED BY THE
COURT ON FEBRUARY 9, 2024**

REDACTED DOCUMENT SOUGHT TO BE SEALED

1 COX COMMUNICATIONS, INC.,
2 COXCOM, LLC, AND COX
3 COMMUNICATIONS CALIFORNIA,
4 LLC,

Counter-Claimants,

5 v.

6 ENTROPIC COMMUNICATIONS, LLC;
7 MAXLINEAR COMMUNICATIONS
8 LLC; AND MAXLINEAR, INC.

Counter-Defendants

1 MaxLinear’s Objections (DE 469-1) (“Obj.”) to the Report and
2 Recommendation (DE 446) (“R&R”) reiterate the same flawed arguments Special
3 Master Keyzer correctly rejected. The Court should reject MaxLinear’s objections.

4 **I. RESPONSE TO OBJECTIONS**

5 **A. The Cox Affiliates Have Standing**

6 CoxCom and Cox California (the “Cox Affiliates”)—affiliates of prior MoCA
7 Alliance Party Cox Communications, Inc.—have standing at least because Cox has
8 plausibly pled they are intended beneficiaries of the IPR Policy. (DE 446 at 40-41.)
9 The counterclaims explain the IPR Policy’s stated objective is “to maximize the
10 likelihood of widespread adoption of [the MoCA] specifications,” which necessarily
11 encompasses having Alliance Parties receive RAND licenses on behalf, and for the
12 benefit, of their affiliates. (DE 266-1, ¶ 541 (citing DE 96 at § 1).) The Ninth Circuit
13 has declared a RAND agreement’s main “purpose...is to promote adoption of a
14 standard by decreasing the risk of hold-up,” without subjecting implementers to a
15 “flood of litigation” that would “discourage” standard adoption. *Microsoft Corp. v.*
16 *Motorola, Inc.*, 795 F.3d 1024, 1052 (9th Cir. 2015).

17 Thus, though not Alliance Parties, the counterclaims show the Cox Affiliates,
18 as MoCA users and affiliates of Cox Communications (DE 261-1, ¶¶ 551-54),
19 expected to and were entitled to receive a RAND license under the IPR Policy, even
20 if via Cox Communications invoking its rights and privileges as an Alliance Party.
21 And because of MaxLinear’s breaches, the Cox Affiliates suffered the injury of being
22 subjected to Entropic’s demands and claims, and the remedy they seek is to “receive
23 an appropriate license on FRAND terms from MaxLinear, and only MaxLinear.” (*Id.*,
24 ¶ 579.) Cox’s averments, combined with the provisions of the IPR Policy and the
25 underlying meaning of a “non-discriminatory” license, suffice at this stage to
26 plausibly allege the Cox Affiliates are third party beneficiaries and have suffered
27 injury providing a basis for the breach claim against MaxLinear. *See Safari v. Whole*
28 *Foods Mkt. Servs., Inc.*, 2023 WL 5506014, at *5 (C.D. Cal. July 24, 2023).

1 MaxLinear's objection to the R&R's consistent finding falls flat. First,
2 MaxLinear criticizes the R&R's citation of New York law on third party beneficiaries.
3 (Obj. at 8). But the standards are the same under either California or New York law.
4 Compare DE 446 at 41 (citing *Bayerische Landesbank, N.Y. Branch v. Aladdin Cap.*
5 *Mgmt. LLC*, 692 F.3d 42, 53 (2d Cir. 2012)) with *Steines v. Crown Media United*
6 *States, LLC*, 2018 WL 6330600, at *7 (C.D. Cal. Dec. 4, 2018). Thus, the R&R's
7 citation of a Second Circuit case is of no import because, as set forth above, Cox's
8 averments plausibly allege the IPR Policy intended to benefit the Cox Affiliates, as
9 required under California law. (DE 446 at 41.) Moreover, unlike the case MaxLinear
10 cites, Cox's averments demonstrate the Cox affiliates have an interest in the IPR
11 Policy, which is the subject of Cox's breach claim. See *Nat'l Rural Telecomms. Co-*
12 *op. v. DIRECTV, Inc.*, 319 F. Supp. 2d 1094, 1100 (C.D. Cal. 2003); Obj. at 8.

13 Second, MaxLinear incorrectly asserts Section 6 of the Promoter Agreement is
14 dispositive and denies the Cox Affiliates any rights under the IPR Policy. (Obj. at 8-
15 9.) The R&R appropriately disregarded this argument in light of the IPR Policy
16 provisions. The R&R cites *Bayerische* for the point that determining intent for a
17 clause stating third parties had no rights "except as otherwise specifically provided
18 herein" required examination of the whole contract. 692 F.3d at 52-58. The Ninth
19 Circuit follows the same rule—"the 'primary rule of interpret[ing]' contracts under
20 California law: to give effect to the parties' mutual intent gathered from the *entire*
21 document." *Int'l Bhd. of Teamsters v. NASA Servs., Inc.*, 957 F.3d 1038, 1046 (9th
22 Cir. 2020) (citation omitted).

23 MaxLinear's myopic focus on Section 6 of the Promoter Agreement improperly
24 disregards the IPR Policy provisions Cox identifies. Moreover, its assertion that
25 Section 6 denies the Cox Affiliates any rights under the IPR Policy is wrong. Neither
26 the IPR Policy nor the Promoter Agreement prevents Cox Communications from
27 demanding, as it has through its counterclaims, a RAND license on behalf of the Cox
28 Affiliates. To the contrary, as the R&R notes, the IPR Policy, including at § 5.1.1 and

§ 1, provides that an Alliance Party can request a RAND license, and Cox's counterclaims sufficiently aver the Cox Affiliates were intended beneficiaries of the IPR Policy and could, including through their affiliation with Cox Communications, reap the benefits of the RAND licensing obligations. (DE 446 at 40-41; DE 266-1, ¶ 541.) Thus, the R&R correctly found the Cox Affiliates have standing.

B. The R&R Correctly Recommended Denying MaxLinear's Motion to Dismiss Cox's Breach of Contract Counterclaim

Cox's counterclaims point to multiple breaches by MaxLinear of the obligations in the IPR Policy, including transferring the asserted patents to Entropic without encumbrances (DE 266-1, ¶¶ 538-50, 556-73, 576) and disclosing confidential MoCA materials to Entropic (*id.*, ¶¶ 559-60, 565-66). Contrary to MaxLinear's assertion, the R&R concludes Cox plausibly averred a breach of contract claim against MaxLinear and a tortious interference claim through inducement of such breach against Entropic and, for the reasons in Cox's Objections (DE 488), Cox's other breach of contract averments are plausible. (*Id.* at 2-9.) In any event, MaxLinear objects to two specific findings in the R&R: that Cox plausibly alleges that (1) the IPR Policy limits patent ownership to Alliance Parties (Obj. at 20-22); and (2) MaxLinear provided confidential MoCA information and materials to Entropic in breach of MaxLinear's obligations (*id.* at 22-25, 52; Obj. at 9-12.) As set forth below, the R&R's analyses and conclusions are correct, and MaxLinear's objections to the contrary were correctly considered and rejected.

1. Cox's Interpretation of the IPR Policy is Plausible

The R&R correctly concluded Cox plausibly alleges MaxLinear breached § 4.1.1 in assigning patents to Entropic, who is not an Alliance Party. So long as the complaint offers "a reasonable interpretation of the contract," dismissal of a contract claim is improper. *Sisley v. Sprint Commc'ns Co., L.P.*, 284 F. App'x 463, 466 (9th Cir. 2008); *see also Ass'n of L.A. City Attorneys v. City of Los Angeles*, 2012 WL 12887541, at *6 (C.D. Cal. Nov. 20, 2012). Under this rule, the R&R's finding should

1 be adopted and MaxLinear's motion to dismiss should be denied. (DE 446 at 13, 22.)

2 MaxLinear nonetheless urges the Court to reject Cox's theory as implausible.
3 But rather than addressing the clear language in § 4.1.1, MaxLinear instead says that
4 language should be ignored based on its interpretation of "unaffiliated third parties"
5 appearing in a transfer provision, § 5.1.2. According to MaxLinear, the transfer
6 provision conflicts with § 4.1.1 because it allows assignment to "unaffiliated third
7 parties," which MaxLinear says must refer to more than third parties who are or
8 become a MoCA member yet are unaffiliated with the assigning Alliance Party. (Obj.
9 at 10.) This convoluted attack on § 4.1.1 does nothing to show that Cox's averments
10 are implausible. In any event, MaxLinear is incorrect and, as detailed below, the
11 provisions of the IPR Policy confirm Cox's interpretation is plausible.

12 First, § 4.1.1 expressly requires Alliance Parties to own relevant intellectual
13 property: "All right, title and interest in and to Alliance Party Intellectual Property
14 shall be owned exclusively by the Alliance Party(ies) who developed the Intellectual
15 Property or by the Alliance Party(ies) to whom the Intellectual Property was properly
16 and legally assigned." (DE 96, § 4.1.1.) This is consistent with the IPR Policy's stated
17 purpose: "to maximize...widespread adoption" of specifications for "which
18 intellectual property rights will attach" that "may be owned by either the [MoCA]
19 Alliance or one or more Alliance Parties," like MaxLinear. (*Id.*, at § 1.) It then
20 mandates such intellectual property "shall" be owned by either "the Alliance
21 Party(ies) who developed the Intellectual Property or by the Alliance Party(ies) to
22 whom the Intellectual Property was properly and legally assigned." (DE 266-1, ¶ 547
23 (citing DE 96 at Definitions, § 4.1.1)); *see, e.g., United States v. Kahn*, 5 F.4th 167,
24 174 (2d Cir. 2021) ("The word 'shall,' in a statute, indicates a command; what follows
25 the word 'shall' is 'mandatory, not precatory.'" (citing *Mach Mining, LLC v.*
26 *E.E.O.C.*, 575 U.S. 480, 486 (2015)); *Gilda Indus., Inc. v. United States*, 622 F.3d
27 1358, 1364 (Fed. Cir. 2010) (citing cases).

28 Second, contrary to MaxLinear's assertion, § 5.1.2 ("Transfer of Essential

Patent Claims”) does not override the “mandatory, not precatory” command of § 4.1.1 requiring Alliance Party’s to own relevant intellectual property. Section 5.1.2 governs transfer of any patent rights that “reasonably may contain or result in” an “Essential Patent Claim.” The first sentence specifies that “[a]ny sale, assignment or other transfer” of such property “to an *unaffiliated third party*...shall be subject to the terms in this IPR Policy.” (DE 96, § 5.1.2 (emphasis added); DE 266-1, ¶¶ 549-50, 556-61.) This does not override § 4.1.1. Nor does it say that Essential Patent Claims can be assigned to anyone. Rather, when read in the context of the IPR Policy, including § 4.1.1, “unaffiliated third party” means a third party that is an Alliance Party or joins MoCA to become an Alliance Party, but is unaffiliated with the assignor. The R&R correctly concluded this is a harmonious, and plausible, reading of the two clauses that neither impermissibly erases the requirements of § 4.1.1, nor renders § 5.1.2 meaningless, as MaxLinear incorrectly suggests (Obj. at 10).

Third, the definition of Essential Patent Claims in § 2 likewise does not override the clear language of § 4.1.1. According to MaxLinear, the definition of Essential Patent Claims refers to “unaffiliated third parties” as including non-Alliance Parties, thereby making Cox’s harmonious reading of § 4.1.1 and § 5.1.2 implausible. (Obj. at 10-11.) MaxLinear’s interpretation is, once again, incorrect. Critically, Essential Patent Claims “means those claim(s) in issued patents..., or that issue from patent applications, anywhere in the world for which an Alliance Party or any of its Affiliates has the right, at any time during the term of the IPR Policy, to grant licenses...” (DE 96, § 3.) This is consistent with Cox’s interpretation of § 4.1.1 as requiring an Alliance Party own the relevant intellectual property and maintain the right to license essential intellectual property.

MaxLinear asserts, however, that because the definition goes on to *exclude* any patent claim whose license requires consent from or payment “to unaffiliated third parties (except for unaffiliated third parties that share licensing revenue with the relevant Alliance Party” or Affiliates thereof, this shows Cox’s interpretation of

1 “unaffiliated third party” in implausible. (Obj. at 10-11.) Not so. But even under
2 MaxLinear’s view, this part of the definition is **excluding** from the IPR Policy
3 essential patent claims owned by third party, non-MoCA members. This is likewise
4 consistent with Cox’s interpretation of § 4.1.1 as it limits the scope of the IPR Policy
5 to essential patent claims owned by Alliance Parties. Additionally, and more
6 critically, this part of the definition has no bearing on whether Alliance Parties must
7 own the relevant intellectual property.

8 MaxLinear also says the reference in § 5.3 (“No Other Licenses”) to “other
9 Alliance Parties” shows an instance where “the MoCA IPR Policy refers to MoCA
10 members who are **also** unaffiliated with the assignor,” and MoCA would have used
11 that language over “unaffiliated third party.” (Obj. at 11.) A far more direct
12 application of such logic, however, is that if MoCA did not want to require ownership
13 to reside in current or future MoCA members, it would have altogether omitted
14 § 4.1.1, which mandates that “Intellectual Property shall be owned exclusively by the
15 Alliance Part(ies) who developed” it or to whom it “was properly and legally
16 assigned.” But it did not. And § 5.3 is consistent with § 4.1.1. Section 5.3 protects
17 only Alliance Parties by limiting any implied licenses. (DE 96, § 5.3.) The prohibition
18 in § 5.3 does not extend to non-MoCA members, which is consistent with § 4.1.1’s
19 requirement that relevant intellectual property is only ever going to be owned by
20 Alliance Parties.

21 Indeed, MoCA’s inclusion of this ownership requirement makes sense given
22 (1) MoCA’s entire purpose was to spread adoption of the relevant standards by,
23 among other things, expanding its membership base and (2) the standards were
24 confidential, so the very act of accessing standards to assess essentiality required
25 MoCA membership. Requiring MoCA members to own essential patents, ensured
26 assignees would join MoCA and shoulder the benefits and burdens of the IPR Policy.

27 MaxLinear never grapples with these points; instead, MaxLinear reprises
28 Entropic’s rejected argument that § 5.1.2 (“Transfer of Essential Patent Claims”)

1 would be unnecessary under Cox’s interpretation because MoCA already includes
2 provisions obligating MoCA members to offer MoCA RAND licenses. (*Compare*
3 *Obj.* at 11 *with* DE 446 at 21.) Section 5.1.2 states “**any** agreement for transferring or
4 assigning” such actual or potential essential patents must “include[] **a provision** that
5 such transfer or assignment is subject to existing licenses **and obligations to license**
6 **imposed on the Alliance Party** by this Agreement and the Alliance Bylaws....” (DE
7 96, § 5.1.2.) The R&R properly rejected this argument because, as Cox explained, this
8 requirement in § 5.1.2 accounts for the fact that, over time, parties join MoCA and
9 parties leave MoCA, and thus requires assignors to contractually impose obligations
10 that will apply regardless of whether a party’s MoCA membership status at a
11 particular time. (DE 446 at 21.)

12 Finally, and critically, MaxLinear’s argument that § 5.1.2 contemplates the
13 “sale, assignment or other transfer by an Alliance Party or its Affiliates” to non-
14 Alliance Parties like Entropic (*Obj.* at 10) contradicts the very sentence it relies on in
15 § 5.1.2, which states “[a]ny sale ... **shall be made subject to the terms** in this IPR
16 Policy.” (DE 96, § 5.1.2 (emphasis added).) MaxLinear never explains how the, at
17 best, entirely indirect and non-specific reference to “unaffiliated third party” overrides
18 this command that a sale “shall” be subject to other terms including § 4.1.1 mandating
19 that Alliance Parties “shall” own the relevant IP. *See, e.g., Kahn*, 5 F.4th at 174. Nor
20 can it. It is a “standard rule of contract interpretation” that “specific terms control over
21 general ones.” *United States ex rel. Welch v. My Left Foot Children's Therapy, LLC*,
22 871 F.3d 791, 797 (9th Cir. 2017) (citation omitted). Thus, the specific terms of
23 § 4.1.1, control over any general term in § 5.1.2. The R&R correctly rejected
24 MaxLinear’s arguments attempting to show Cox’s interpretation is implausible.

25 **2. Cox Sufficiently Pleads MaxLinear Breached Confidentiality** 26 **Obligations**

27 The R&R determined Cox sufficiently alleges MaxLinear violated its
28 obligations to MoCA by improperly disclosing confidential documents to Entropic.

(DE 446 at 22-25, 52.) MaxLinear does not dispute this finding. (Obj. at 11-12.) Instead, MaxLinear simply objects to the R&R on the basis that it does not address Cox’s standing to sue on behalf of MoCA for the alleged disclosure. (Obj. at 12.)

However, as Cox explained in briefing and at the hearing after MaxLinear first raised this argument, MaxLinear’s standing challenge simply ignores Cox’s averments. (DE 384-1 at 26-27.) Cox’s counterclaim avers that the confidential documents themselves and the Promoter Agreement granted Cox the right to enforce the confidentiality obligations. (DE 276, ¶ 546.) The confidential MoCA standards stated “This document and each element of this document are the Confidential Information of ... MoCA and of the MoCA members that contributed to this document. Both MoCA and/or any such MoCA members may enforce such obligations of confidentiality directly.” (*Id.*) Further, at the time of the breach, Cox was an Alliance Party. (*Id.*, ¶ 569.) These averments alone demonstrate standing.

MaxLinear entirely disregards these averments in favor of an irrelevant claim that Cox’s standing terminated when Cox withdrew from MoCA in 2022 before this suit was filed. (Obj. at 12.) MaxLinear’s assertion is also incorrect. [REDACTED]

[REDACTED] (DE 337 at 15.) The R&R thus correctly determined Cox has standing.

C. The R&R Correctly Rejected MaxLinear’s Challenge to Cox’s Declaratory Judgment Claim

The R&R properly rejected MaxLinear’s incorrect objection to Cox’s declaratory judgment claim as duplicative. (*Compare* DE 469-1 at 12-14 *with* DE 446 at 53-54.) The R&R correctly determined the declaratory judgment claim “is not merely duplicative” because “whereas Cox’s counterclaim for breach of contract primarily seeks damages, specific performance, and injunctive relief as to MaxLinear, Cox’s counterclaim for declaratory judgment is directed to both MaxLinear and

1 Entropic and seeks a declaration that the assignment from MaxLinear to Entropic is
2 void.” (DE 446 at 54.)

3 MaxLinear incorrectly urges that Cox’s separate claim for declaratory
4 judgment should be dismissed because Cox’s allegations for breach of contract
5 overlap with its allegations for declaratory judgment and the claims seek the same
6 remedy. Even if there is overlap in the allegations, this does not warrant dismissal as
7 the claims are distinct and present different remedies: the purpose of Cox’s
8 declaratory judgment claim is to remedy future wrongs and uncertainties while the
9 breach of contract claim aims to remedy past wrongs. (DE 384-1 at 27-28); *see Steen*
10 *v. Am. Nat’l Ins. Co.*, 609 F. Supp. 3d 1066, 1073 (C.D. Cal. 2022) (rejecting
11 argument that breach of contract and declaratory judgment claims were duplicative
12 because it “ignores the alleged future uncertainty that declaratory judgment would
13 remedy that would not be remedied by damages for breach of contract”).)

14 The cases MaxLinear cites are inapposite. In *Cove Partners, LLC v. XL*
15 *Specialty Insurance Co.*, the court dismissed Cove’s breach of contract claim, noting
16 that dismissal “resolve[d] any existing controversy raised by Cove’s declaratory relief
17 cause of action,” and did not separately determine if Cove adequately pled a
18 declaratory judgment claim. 2016 WL 461918, at *11-12 (C.D. Cal. Feb. 2, 2016). In
19 *United Safeguard Distributors Ass’n, Inc. v. Safeguard Business Systems, Inc.*, the
20 plaintiffs sought declaratory judgment as to specific disputes regarding the parties’
21 rights and duties under an agreement. 145 F. Supp. 3d 932, 960 (C.D. Cal. 2015). The
22 court dismissed the declaratory judgment claim as duplicative because the “breach of
23 contract claim resolved all questions regarding contract interpretation,” and
24 “Plaintiffs have not alleged any facts showing that Plaintiffs require the immediacy
25 of a judicial declaration.” *Id.* at 961 (citation omitted). Further, the court noted
26 “Plaintiffs appear to seek judicial declaration not as a preventative measure, but as a
27 remedial measure to address previously alleged breach of contract claims.” *Id.*

28 Unlike in *Cove* and *Safeguard*, Cox’s claim seeks a judicial declaration now to

1 settle which party owns the patents and is subject to the MoCA IPR Policy licensing
2 obligations. This requested clarity is not available under Cox's breach of contract
3 claim. As such, Cox's declaratory judgment claim is appropriate and not duplicative.
4 *See Steen*, 609 F. Supp. 3d at 1073; *Guerra v. Sutton*, 783 F.2d 1371, 1376 (9th Cir.
5 1986) (holding declaratory relief is appropriate "(1) when the judgment will serve a
6 useful purpose in clarifying and settling the legal relations in issue, and (2) when it
7 will terminate and afford relief from the uncertainty, insecurity, and controversy
8 giving rise to the proceeding") (citation omitted).

9 Moreover, the record unequivocally shows a declaratory judgment is necessary
10 at this time. First, Entropic has sued Cox for infringement of MoCA patents, and seeks
11 \$200 million in damages which, [REDACTED]
12 [REDACTED]. The counterclaim avers that any assignment of essential patents to
13 Entropic is void under the IPR Policy (DE 266-1, ¶¶ 567, 579, 581-82), which would
14 mean MaxLinear should own the asserted patents, and Entropic cannot assert
15 infringement claims. (DE 384-1 at 28; DE 380-1 at 31.) There is no dispute that
16 declaratory judgment on this issue will clarify and settle issues, including Entropic's
17 ability to make its infringement claims.

18 Second, the record belies MaxLinear's assertion it was "drag[ged]" into this
19 case and shows why a declaratory judgment is needed. As detailed in the
20 counterclaims and Cox's objection (DE 460-1), MaxLinear secretly targeted Cox for
21 litigation by [REDACTED]
22 [REDACTED]. It has additionally claimed that "Cox will have to bear the costs of litigation
23 and pay damages regardless of who the proper patent owner is." (DE 335 at 19; *see*
24 *also* DE 329-1 at 7-8 (Entropic alleging same).) Stated simply, each of these entities
25 has now said Cox must pay license fees or damages concerning the patents and Cox
26 is entitled to a judgment as to which entity is the proper claimant.

1 Dated: May 24, 2024

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